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### CUSTOMARY LAW DOCUMENTS AS A SOURCE OF HISTORY

The commonest form of history writing in Arabia as in other countries is the annual chronicle of outstanding events, ranging from political occurrences such as raids, battles, murders, to natural calamities like famines, floods, plagues, the arrival of locusts, and natural phenomena like earthquakes and the appearance of meteors and strange stars. These are the substance, recorded without comment, except rarely, of a simple chronicler like the Ḥaḍramī historian Shanbal. A more developed type of chronicle with a sense of the continuity of historical narrative is the Yemeni *Ghāyat al-amānī*, though it has limitations in its choice of data; but the Yemen has had some exceptionally able historians, especially the biographers of some of the Zaydī Imāms. Al-Jarmūzī's *Sīrat al-Mutawakkil* succeeds in weaving accounts of campaigns, policies, the controversies of scholars, economics and their effect on the townsfolk and peasants into a true picture of life and conditions in the 11th/17th century, documented with a judicious selection of correspondence exchanged between the principal actors in the historical scene.

It must be confessed nevertheless that such historians are rare in the Peninsula, and most, naturally enough, concern themselves mainly with the exciting events of battle and intrigue, especially that which touched their own lives. They are rarely interested to tell us about what are to them the ordinary humdrum course of actual living, other than say current prices of comestibles, sometimes. It does not occur to them to describe society in the broadest sense of the word as they see it around them — this they take for granted — but those of us in later ages, knowing nothing of the society of these earlier times, are at a loss to understand the interplay of forces and currents behind the events that they record so starkly. We have therefore to try to re-constitute what is lacking in other ways.

Our interest lies in social history rather than in battles of long ago. Archaeology has of course done much to redress the balance, and if I were to take an example I should point to the vivid living picture of the Roman world that is revealed to us in Pompeii and in the Pompeii Exhibition in London.

How much the history of commerce is neglected by historians in general is revealed by the immense mass of documents preserved in the mediaeval Cairo Geniza which contained actual Arabic documents, Arabic in Hebrew character, and of course Hebrew. But this collection is of prime value for social life in the mediaeval Islamic world, including the Arabian Peninsula.

The purpose of this paper however is to draw attention to an almost completely neglected source of information through which it is possible to supplement the writings of the historians of the Arabian Peninsula, and indeed to go further than this, and interpret obscurities in ancient pre-Islamic and Islamic history. This is by collecting the

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numerous agreements, often in colloquial Arabic, that are to be found with the various segments of Arabian society, and getting their owners to explain and comment on them. Most of such documents take the form of an agreement following upon a dispute which has been settled by some third party. A first observation one makes is that custom — 'urf or 'āda — is not a jumble of *ad hoc* rules, but a well established and logical law. In fact in much of south-west Arabia instead of these two terms, they use *shar'* as for example at Ṣa'da of the northern Yemen, but they mean customary law, not the Islamic *sharī'a*. Of course the two are probably only rarely inconsistent with each other.

The most important of the various types of document I have collected is, in my view, the corpus relating to the *hawṭa* which I discussed in a general fashion in my contribution, some years ago, to the Ṭaha Husain Anniversary Volume. For those who do not know what a *hawṭa* is, may I say that in nearly every respect it resembles the pre-Islamic *ḥaram*, a sacred enclave, and is presided over by a *Manṣab*, traditionally an authority on *sharī'a* and 'urf, but more often than not his function will be to give a decision in accordance with 'urf when he is asked to make a judgement. The *Manṣab* will be of a family of the class known as *Mashāyikh*, or a Sayyid. The security of the *hawṭa* is guaranteed by the surrounding tribes with written guarantees of a pattern much the same basically in the case of every *hawṭa*, and the *Manṣab* acts as an arbiter between these tribes in their disputes. The tribes make an annual *ziyāra* to the tomb of the *Manṣab*'s ancestor inside the area of the *hawṭa* and are entertained by him. The *Manṣab*'s property inside and outside the *hawṭa* is exempt from taxation. This is obviously a very ancient institution and it will be recalled that in the Jāhiliyya, the Prophet's forbears exercised the function of *ḥakam*, 'Abd al-Muttalib being specially famous in this office. Apart from the intrinsic interest of these documents for Hadramī history itself in showing the interplay of tribal organisation, the sultans, and the 'ulamā, they do help to understand how the pre-Islamic *ḥaram* worked.

If the *hawṭa* is considered to have something of a sacred quality like the *ḥaram* so friend and foe can alike meet there, the guaranteeing of the inviolability of the central market of tribes is a secular institution with some points in common. The *shar'* customary law of the 'Awdhillāh tribe says for instance "A foe may not enter the market (of Lawdar). If he be a peasant or a craftsman (he is of no account and may do so). If he has already entered (it) he may not be molested in the market on a Sunday, but must depart on the Monday evening."

واخصم ما يدخل شئ اسوق . انكان امضعيف وامسكين ، وان قد دخل  
ما ينتكر شئ بمسوق الاحد ، مروحه الاثنين .

The city of Ṣan'ā' is said to be *muḥajjara* by the seven great tribal confederations in its vicinity — if this inviolability is infringed the guilty party has to bring cattle to slaughter as *aqīras* as a case in point would be when a tribesman robs or murders in the city. When discussing the *taḥjīr* with a Ṣan'ānī scholar he agreed that there must be tribal documents which give the rules for the preservation of the city's security and a list of penalties for infringing it. We know from the *Ta'rīkh al-Rāzī* that Ṣan'ā' was considered *maḥfūza* or

*mahmiyya* and the pre-Islamic Sabaean inscriptions show that it was regarded as a *mahram* — so if such *tahjir* documents are to be found they could well throw light on the special protection accorded the city from the Jāhiliyya onwards — I intend to pursue this line of research.

Aḥmad al-Sayaghi has published in *Majallat al-makhtūtāt* an invaluable document, *Qānūn Ṣan'ā'*, though he does not say, unfortunately, where he found the MS original. This I have, with the aid of my friend, Qāḍī Ismā'īl al-Akwa', translated into English with many additional notes. It consists of regulations for the shopkeepers and craftsmen, the fixing of prices, etcetera, and except that it does not have anything about a *muhtasib*, it resembles the rules of the *ḥisba* manuals. The *Qānūn* appears to be based upon or codified from regulations made by each craft for carrying on its particular trade. Many of such agreements seem to exist in *San'ā'* but do not figure in the *Qānūn*, such as one with the carpenters by Professor W. Dostal, which we expect to publish in our large volume on *San'ā'*. Obviously these would enable us to build up a picture of the city's economic and social life. Moreover, I can trace back earlier versions of the *Qānūn* at least to the first half of the 11th/17th century but obviously market regulations for *San'ā'* must have been in existence long before that.

*Qānūn Ṣan'ā'* is a fairly sophisticated document reflecting mediaeval market organisation, but in Shibām the commercial capital of Ḥadramawt al-Dākhil, well over twenty years ago, I was able to obtain through the good offices of one of its principal merchants, Ḥusayn La'jam, a series of documents from the chief of the *dallāls* there, which seemed to show an earlier stage of development than *San'ā'*. Whereas the tribeman coming into *San'ā'* stays in a *samsara* or *khān*, in Ḥadramawt he stays with the *dallāl* as his guest, while the latter sells his animals for him and buys what he needs — all this on a commission basis. At one time the *dallāls* in Shibām even used to collect the market tax for the sultan, being I suppose, informed about all transactions taking place. A curious feature is that the Shibām *dallāl* families regarded individual tribes as belonging to a certain house of *dallāls*, and they could buy and sell the good-will in a tribe between each other — some of the documents containing such transactions.

In Ḥadramawt the Quarters (*ḥāfāt/ḥuwayf*) of the little towns were highly organised, and here again I have a collection of some of their *wathā'iq*, one going back nearly two centuries and showing that in the orthodox Shāfi'ī city of Tarīm trial by *bish'a* was exercised by the tribal rulers, i.e. testing a man's veracity by flicking his tongue with a red-hot knife. The Quarters provided a large range of what nowadays would be considered social and municipal services and organised dancing on ceremonial occasions (*afrah*). They kept the Quarter swept, looked after foundling children, guarded the Quarter boundaries and provided gear for washing the dead and even the bier - *al-ālat al-ḥadbā'* as the poet calls it. In *San'ā'* the Quarters have lost many such functions which have passed to the *Baladiyya* founded by the Ottomans at their second occupation, but perhaps their role had much diminished even before then. One feature of the Ḥadrami town Quarters I must not omit to mention is that they participated in organising the traditional ibex hunts which have a complicated set of laws and are in fact a relic of pre-Islamic ritual — for we know

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from the inscriptions that it was essential for a community to hunt the ibex from time to time to procure rain (*raḥma*). This idea is still current in the hunting poems known as Bani Mighrāh in such verses as

إذا شيء قتل عند القبائل وأهل كوشار  
نشوفه في فرح كن عنده عيد لافطار  
عسى رحمه بها ينجل همى ولا كدار

In 1953 and 1963-64 I had begun to investigate through written agreements among fishermen, both the customary law on fishing and that on navigation — for the latter there was and is a sort of 'urfi maritime law that existed long before international maritime law imposed by the west. I hope to correlate this with *fatāwā* cases that seem to involve a code of maritime law which the Arabic sources have ignored. I have tried to collect, in order to supplement my south Arabian documents, some material from the Gulf, and have in fact published an article on the fish-traps (*ḥaḍra*) of al-Baḥrayn, but there must be many documents on the pearl-fishing industry. On a recent visit to al-Baḥrayn I was delighted to see that documents of all sorts, including maritime industries of course, are being collected at the Museum. A curious example of what the regulations of ordinary folk can preserve in these papers is that in al-Mukalla they refer not to the port by that name, but by al-Khiṣa, meaning the Bay, the name by which al-Hamdānī knew it a thousand years ago.

There is a mass of customary law relating to irrigation, and some of this may be consulted in Dr. A.A. Maktari's study on irrigation in Lahej, but in a report of Wādī Zabīd a facsimile of al-Jabartī's regulations for the division of water there has been published, belonging to the 9th/15th century — such documents should be rich in history. Share-cropping agreements one already finds in the *fatāwā* which deal with 'urfi cases in general, and often the *su'āl* itself is in technical colloquial Arabic.

Tribal law is of great interest to the historian both the written cases and the mediaeval Yemeni Mss. of which I have copies. In the Yemen this is still called *Taghut* but I do not think it is invariably different from *shari'a* — a study of it might well aid us towards better understanding of the pre-Islamic legal inscriptions, and I have come across practices existing today such as testing the *bish'a* judge's competence by making him guess what secret thing the contending parties have brought with them — just as they used to test the *kāhin* as you may read in the books of Ibn al-Ḥabīb.

In the former Aden Protectorates I have seen many documents lying about folded into tapers, and when the British Resident in 1948 was settling Kathirī-Qu'ayṭī boundaries documents like this were produced by the sackful. In British files from British residencies in various parts of Arabia, now in Britain, there are more than a few Arabic documents often not easy to understand, which are of the types I have mentioned. It is advisable to study these now for dialect is being forgotten, and in Kuwait for example when I went with Miss Qutāmi to see a famous *nawkhudha*, even she was not able to understand a number

of his expressions.

There are many groups I should like to consult on their *wathā'iq* — the Tihāma peoples, ship-builders, the 'Uqaylīs who for centuries seem to have traded freely between such cities as Damascus and the interior of Arabia, the Kibīs who ran the Kibī caravan from the Yemen to the Holy Cities. It is a pity that the present is so rapidly overtaking the past that even the memory of so much of it may be forgotten, and such institutions as these may be no more than names, not history that still lives for us.